

ENTERED

November 04, 2016

David J. Bradley, Clerk

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
BROWNSVILLE DIVISION**

DULCE ISABEL SALAZAR-
ESPINOZA,
Petitioner,

v.

UNITED STATES OF AMERICA,
Respondent.

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Civil Action No. 1:16-cv-00212
(Criminal No. 1:14-cr-1022-1)

**ORDER ADOPTING MAGISTRATE
JUDGE'S REPORT AND RECOMMENDATION**

Before the Court is the "Magistrate Judge's Report and Recommendation" (Docket No. 6) in the above-referenced cause of action. The Magistrate recommends dismissal of the following: Salazar-Espinoza's "Motion Under 28 U.S.C. § 2255 to Vacate, Set Aside, or Correct Sentence by a Person in Federal Custody" (Docket No. 1) and "Motion for Minor Role Adjustment and Sentence Reduction based on United States v. Quintero-Leyva and Pursuant to Amendment 794 and 28 U.S.C. § 2255" (Docket No. 2).

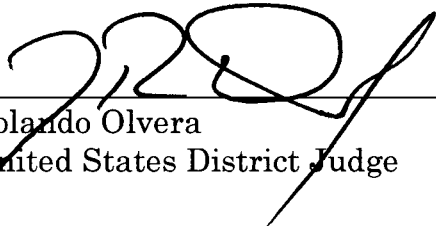
On October 28, 2016, Salazar-Espinoza filed an objection to the Magistrate's Report and Recommendation, entitled "Motion in Response to Magistrate Judge's Report and Recommendation to Submitted Motion Pursuant to USC § 2255 in Light of Amendment 794" (Docket No. 9). In her objection, Salazar-Espinoza argues that her sentence should be reconsidered in light of Amendment 794 to the United States Sentencing Guidelines, which echoes the arguments in her two original motions.

After a de novo review of the file, the "Magistrate Judge's Report and Recommendation" (Docket No. 6) is **ADOPTED**. It is therefore **ORDERED, ADJUDGED, and DECREED** that to the extent Salazar-Espinoza seeks relief under 28 U.S.C. § 2255, her motions (Docket No. 1 and 2) are **DISMISSED** for failure to state a cognizable claim.

Moreover, to the extent Salazar-Espinoza seeks a reduction of her sentence based on a retroactive application of Amendment 794 to the United States Sentencing Guideline, her motions (Docket No. 1 and 2) are construed as seeking relief pursuant to 18 U.S.C. 3582(c)(2) and are **DENIED** because Amendment 794 has not been given retroactive effect under § 1B1.10 of the United States Sentencing Guideline. *See United States v. Drath*, 89 F.3d 216, 218 (5th Cir. 1996) (holding that if an amendment is not listed as retroactive in § 1B1.10, it does not apply retroactively). A certificate of appealability shall not issue.

The Court **ORDERS** the Clerk's Office to close the above-captioned case.

Signed on this 3rd day of November, 2016



Rolando Olvera
United States District Judge